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11 Santander Consumer USA Inc.

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

11 CRYSTAL GUEVARA,  
12 Plaintiff,  
13 vs.  
14 SANTANDER CONSUMER USA INC., an  
15 Illinois corporation; and DOES 1 through 10,  
16 inclusive,  
17 Defendants.

**CASE NO. 4:23-cv-00159**

**NOTICE OF REMOVAL OF ACTION  
PURSUANT TO 28 U.S.C. § 1332  
[Diversity Jurisdiction]**

**(Removed from the Superior Court of  
California, County of Alameda Case No.  
22CV023246)**

18 Complaint Filed: December 6, 2022

19  
20 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN  
21 DISTRICT OF CALIFORNIA:**

22 PLEASE TAKE NOTICE that Defendant Santander Consumer USA Inc. ("SC"), hereby  
23 removes Case No. 22CV023246, filed in the Superior Court of California, County of Alameda,  
24 and all claims and causes of action therein, to the United States District Court for the Northern  
25 District of California. As grounds for removal, SC states that this Court has original jurisdiction  
26 over this matter under 28 U.S.C. § 1332 based on diversity jurisdiction, and that all the claims and  
27 causes of action in the matter may be removed to this Court under 28 U.S.C. §§ 1441 and 1446.

## STATE COURT ACTION AND BACKGROUND

1. On December 6, 2022, Plaintiff Crystal Guevara (“Plaintiff”) commenced this action in the Superior Court of the State of California in the County of Alameda by filing the complaint entitled *Crystal Guevara v. Santander Consumer USA Inc.* as case number 22CV023246 (“the State Court Action”).

2. On December 14, 2022, Plaintiff served SC with the Summons and Complaint by process server on CT Corporation at 330 N. Brand Blvd., Suite 700, Glendale, CA 91203. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all documents served on SC from the State Court Action are attached hereto as **Exhibit A**.

3. The Complaint alleges, among other things, claims arising from a notice provided by SC to Plaintiff after the repossession of her vehicle. The prayer for relief seeks damages against SC, including actual damages, statutory damages, punitive damages, injunctive relief, pre-judgment interest, attorney's fees, and costs.

4. SC's time to respond to the Complaint in the State Court Action has not expired. The copy of the Summons and Complaint that SC received is attached hereto as part of Exhibit A.

5. Other than a case management conference which has been set for May 3, 2023, no motions or other proceedings are pending in the State Court Action.

## **DIVERSITY OF CITIZENSHIP AND VENUE**

6. This Court has jurisdiction over this case under 28 U.S.C. § 1332 because the citizenship of Plaintiff is entirely diverse from the citizenship of SC, and the amount in controversy exceeds \$75,000. As shown below, Plaintiff is a citizen of California and SC is an Illinois corporation with its principal place of business in Texas.

7. SC is informed and believes that at all relevant times, Plaintiff was and is domiciled in, and is a citizen of, the United States and the State of California. According to the Complaint, “Plaintiff is...a resident of San Francisco County and a citizen of California.” Exh. A., ¶ 8. Plaintiff also states she resides in Alameda County. *Id.* ¶ 11. In *Kanter v. Warner-Lambert Co.*, the Ninth Circuit held that a “person’s domicile is her permanent home, where she resides with the intention to remain or to which she intends to return.” 265 F.3d 853, 857 (9th Cir. 2001). Here,

1 Plaintiff identifies herself as a resident of both San Francisco County and Alameda County,  
2 California. Exh. A ¶¶ 8, 11. Thus, as alleged in the Complaint, Plaintiff is a citizen of California  
3 for diversity purposes.

4        8. This notice of removal is timely under 28 U.S.C. § 1446(b) because SC's time to  
5 respond to the Complaint in the State Court action has not expired based on service on CT Corp.  
6 via process server on December 14, 2022.

7        9. SC is engaged in the business of providing financing to purchasers of automobiles.  
8 SC is incorporated in Illinois and its principal place of business is in Texas. Exh. A ¶ 9.  
9 Accordingly, SC is a citizen of both Illinois and Texas for diversity purposes and has been at all  
10 times relevant, including when the State Court Action was filed and at the time of removal. *See*  
11 28 U.S.C. § 1332(c)(1) (“a corporation shall be deemed to be a citizen of every State and foreign  
12 state by which it has been incorporated and of the State or foreign state where it has its principal  
13 place of business”).

14 10. Defendants “Does 1-10” are fictitious defendants whose consent is not required for  
15 purposes of removal. *See Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 (9th Cir. 1988).

16 11. For purposes of removal, complete diversity exists between Plaintiff and SC  
17 pursuant to 28 U.S.C. §1332.

18           12. Venue is proper under 28 U.S.C. § 1446(a), which provides for removal of any civil  
19 action to the federal district court for the district and division embracing the place where the action  
20 is pending. Venue lies in the United States District Court for the Northern District of California,  
21 pursuant to 28 U.S.C. §§ 1391(b) and 1441(a), because the State Court Action was filed within  
22 this district, and this is the district in which the action arose.

23           13. A copy of the written notice required by 28 U.S.C. § 1446(d) directed to the  
24 Superior Court, County of Santa Clara (without exhibits) is attached hereto as **Exhibit B**. SC will  
25 serve and file this notice on Plaintiff after filing this Notice of Removal.

### **AMOUNT IN CONTROVERSY**

27       14.     Generally, “[t]he amount in controversy is determined from the allegations or prayer  
28 of the complaint.” *Schwarzer et al., Fed. Civ. Proc. Before Trial*, ¶ 2:450 (2009) (citing *St. Paul*

1 *Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938), which held that an inability to  
 2 recover an amount adequate to give the court jurisdiction does not oust the court of jurisdiction).

3       15.     A defendant may remove a suit to a federal court notwithstanding the failure of the  
 4 plaintiff to plead above the required amount. In this situation, such as the case at bar, a removing  
 5 defendant “need include only a plausible allegation that the amount in controversy exceeds the  
 6 jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 554  
 7 (2014). Evidentiary submissions are only required if plaintiff contests, or the court questions,  
 8 defendant’s allegation after the notice of removal is filed. *Id.* In determining the amount in  
 9 controversy, the Court may look beyond the complaint to determine whether the amount in  
 10 controversy is met. *See Abrego v. Dow Chemical Co.*, 443 F.3d 676, 690 (9th Cir. 2006).

11       16.     “In actions seeking declaratory or injunctive relief, it is well established that the  
 12 amount in controversy is measured by the value of the object of the litigation.” *Hunt v. Wa. State*  
 13 *Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977) (superseded by statute on other grounds as stated  
 14 in *United Food & Commer. Workers Union Local 751 v. Brown Grp.*, 5517 U.S. 544, 557 (1996)).  
 15 “If the primary purpose of a lawsuit is to enjoin a bank from selling or transferring property, then  
 16 the property is the object of the litigation.” *Reyes, et al. v. Wells Fargo Bank, N.A.*, 2010 U.S. Dist.  
 17 LEXIS 113821, at \*12-13 (N.D. Cal. 2010); *accord Nguyen v. Wells Fargo Bank, N.A.*, 749 F. Supp.  
 18 2d 1022, 1028-29 (N.D. Cal. 2010) (where complaint seeks to invalidate a loan secured by a deed  
 19 of trust, amount in controversy is the loan amount).

20       17.     To satisfy the preponderance of the evidence test, a defendant must provide evidence  
 21 that “it is more likely than not” that the amount in controversy is satisfied. *See Sanchez v.*  
 22 *Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). In determining the amount in  
 23 controversy, the Court may look beyond the complaint to determine whether the amount in  
 24 controversy is met. *See Abrego*, 443 F.3d at 690.

25       18.     Although SC denies that Plaintiff is entitled to recover any amount, and specifically  
 26 denies that Plaintiff is entitled to the relief in the various forms sought, the allegations stated in the  
 27 Complaint more likely than not place in controversy more than \$75,000, exclusive of interests and  
 28 costs.

1       19. Plaintiff alleges causes of action for violation of the Rosenthal Fair Debt Collection  
 2 Practices Act, violation of the California Consumer Credit Reporting Agencies Act, conversion, and  
 3 violation of the Unfair Competition Law.

4       20. A plaintiff may recover the following damages under each cause of action:

- 5           a. Rosenthal Fair Debt Collection Practices Act: a plaintiff may recover actual  
               damages, statutory damages, and attorney's fees. Cal. Civ. Code § 1788.30.
- 6           b. California Consumer Credit Reporting Agencies Act ("CCRAA"): For a  
               negligent violation, a plaintiff may recover actual damages, attorney's fees,  
               pain and suffering. Cal. Civ. Code § 1785.31(a)(1). For a willful violation,  
               a plaintiff may recover actual damages and punitive damages of not more  
               than \$5,000 per violation. *Id.* § 1785.31(a)(2). A plaintiff may also obtain  
               injunctive relief. *Id.*
- 7           c. Conversion: Plaintiff may recover the "value of the property at the time of  
               the conversion, with the interest from that time, or, an amount sufficient to  
               indemnify the party injured for the loss which is the natural, reasonable and  
               proximate result of the wrongful act complained of and which a proper  
               degree of prudence on his part would not have averted; and [a] fair  
               compensation for the time and money properly expended in pursuit of the  
               property." Cal. Civ. Code § 3336.
- 8           d. Unfair Competition Law: Public injunctive relief and attorney's fees. Cal.  
               Bus. & Prof. Code § 17203; Cal. Civ. Code § 1021.5.

9       21. Plaintiff requests actual damages, statutory damages, and punitive damages, in  
 10 addition to injunctive relief and attorney's fees. Exh. A, Prayer for Relief.

11       22. Specifically, Plaintiff seeks \$5,000 for each monthly reporting to the consumer  
 12 reporting agencies after the sale of Plaintiff's vehicle [Exh. A ¶ 31] and a waiver of Plaintiff's  
 13 deficiency (\$12,440.38) [*id.* ¶ 33].

14       23. A plaintiff may recover up to \$5,000 in punitive damages per violation pursuant to  
 15 the CCRAA. "It is well established that punitive damages are part of the amount in controversy in

1 a civil action.” *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001).

2 24. Accordingly, if Plaintiff prevails on her CCRAA claim and establishes the existence  
 3 of a willful violation, she could recover punitive damages of up to \$5,000 per violation. Although  
 4 SC does not believe any violations occurred, Plaintiff may allege a separate violation of the CCRAA  
 5 each time SC allegedly reported inaccurate information between October 2022 and January 2023,  
 6 for a total of four violations, allowing up to \$20,000 in punitive damages.

7 25. Plaintiff requested specific relief totaling more than \$32,000 (\$20,000 in punitive  
 8 damages under CCRAA and \$12,440.38 for waiver of the deficiency balance).

9 26. Plaintiff seeks actual and statutory damages under the Rosenthal Act and CCRAA.  
 10 See Exh. A.

11 27. Actual damages for violation of the Rosenthal Act and the CCRAA may include  
 12 emotional distress damages. *See Cal. Civ. Code § 1785.31(a)*.

13 28. Emotional distress damages are properly considered in calculating the amount in  
 14 controversy. *See Simmons v. PCR Technology*, 209 F. Supp. 2d 1029, 1031-1035 (N.D. Cal. 2002).  
 15 Sums of up to \$85,000 have been awarded for emotional distress for inaccurate reported information  
 16 on credit report, as Plaintiff alleges here. *Nelson v. Equifax*, 522 F. Supp. 2d 1222, 1239 (C.D. Cal.  
 17 2007); *Kealy v. Ford Motor Credit Company, LLC*, 2017 WL 5471568 (Cal. Super. Aug. 29, 2017)  
 18 (jury awarded \$25,000 in non-economic damages and \$9,213 in punitive damages under CCRAA)  
 19 (reversed in part regarding economic damages 2019 WL 3072250).

20 29. Here, a reasonable estimate of Plaintiff’s actual damages for the purported violations  
 21 of the Rosenthal Act and CCRAA, including emotional distress, if she were to prevail, is \$10,000.

22 30. Plaintiff’s conversion claim seeks to recover the value of the vehicle that was  
 23 repossessed, on the basis that SC allegedly failed to provide her with a proper statutory notice. Exh.  
 24 A ¶ 36.

25 31. The value of the vehicle at time of auction was \$16,500. *See Exhibit C* (Explanation  
 26 of Deficiency). If Plaintiff were to prevail, a reasonable estimate of damages under the conversion  
 27 claim is \$16,500.

28 32. The Complaint also demands attorney’s fees and costs. Exh. A, Prayer for Relief.

1       33. “[W]here an underlying statute authorizes an award of attorneys’ fees, either with  
 2 mandatory or discretionary language, such fees may be included in the amount in controversy.”  
 3 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998).

4       34. The Ninth Circuit explained that “when a statute or contract provides for the recovery  
 5 of attorneys’ fees, prospective attorneys’ fees must be included in the assessment of the amount in  
 6 controversy.” *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 922 (9th Cir. 2019).

7       35. The Ninth Circuit has generally adopted the “lodestar” approach for assessing the  
 8 award of reasonable attorneys’ fees. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir.  
 9 2008).

10      36. If Plaintiff prevailed, a reasonable estimate of Plaintiff’s attorney’s fees that could  
 11 be in controversy is \$30,000, should the case proceed through trial.

12      37. Accordingly, the amount in controversy includes the sums of: (1) \$12,440.38 for  
 13 waiver of Plaintiff’s deficiency balance; (2) \$20,000 in punitive damages under the CCRAA; (3)  
 14 \$10,000 in actual damages under the Rosenthal Act and CCRAA; (3) \$16,500 in damages under the  
 15 conversion claim; and (5) \$30,000 in attorney’s fees, for a total of \$88,940.38.

16      38. “It is well established that punitive damages are part of the amount in controversy in  
 17 a civil action.” *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001). Here, if Plaintiff’s  
 18 allegations are accurate, she could recover punitive damages. Even a punitive damages multiple of  
 19 1:1 would further exceed the amount in controversy requirements as she has specifically requested  
 20 at least \$32,000 in damages.

21      39. Finally, Plaintiff seeks public injunctive relief enjoining SC from collecting  
 22 deficiency balances, which amounts to a waiver of all account balances, from all California  
 23 customers who received an allegedly defective statutory notice from SC. Exh. A ¶ 46(c).

24      40. In actions seeking declaratory or injunctive relief, it is well established that the  
 25 amount in controversy is measured by the value of the object of the litigation.” *Corral v. Select  
 26 Portfolio Servicing, Inc.*, 878 F.3d 770, 775 (9th Cir. 2017).

27      41. While the total value of the requested injunctive relief is unclear, the existence of the  
 28 relief requested evidences that the amount in controversy exceeds \$75,000.

1       42.     Although SC denies that Plaintiff is entitled to recover any amount, the allegations  
2 in Plaintiff's Complaint place in controversy more than \$75,000.00, exclusive of interest and costs.

3       43.     Accordingly, the jurisdictional amount needed to establish diversity has been met  
4 and this Court has original jurisdiction pursuant to 28 U.S.C. §1332.

5       WHEREFORE, SC prays that the above action now pending in the Superior Court of the  
6 State of California, County of Alameda be removed to this Court.

7  
8 January 12, 2023

MCGUIREWOODS LLP

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10     By: /s/ Benjamin J. Sitter  
11           Benjamin J. Sitter  
12           Attorneys for Defendant  
13           Santander Consumer USA Inc.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Removal has been served upon the counsel of record via notice delivered by the Court's ECF System and/or U.S. First Class mail on this 12th day of January 2023:

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Benjamin J. Sitter